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# California Regional Water Quality Control Board San Diego Region

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<http://www.waterboards.ca.gov/sandiego>

June 18, 2009

Mr. David Ahles  
Senior Civil Engineer  
City of Carlsbad  
1635 Faraday Avenue  
Carlsbad, CA 92008

**Certified Mail – Return Receipt Requested**

7008 1140 0002 8455 9701

**In reply refer to:**

CIWQS No.: 366823: cmeans

**Subject: Notice of Violation No. R9-2009-0097  
Failure to Comply with Clean Water Act Section 401 Certification  
04C-077 for the Calavera Dam Remedial Improvements Project**

**Site Location: 3593 Tamarack Avenue, Carlsbad CA**

Dear Mr. Ahles:

Enclosed please find Notice of Violation (NOV) No. R9-2009-0097 for alleged violations of Clean Water Act Section 401 Water Quality Certification 04C-077 (hereafter Certification) Conditions C.4 and C.5.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Christopher Means at (858) 637-5581 or [cmeans@waterboards.ca.gov](mailto:cmeans@waterboards.ca.gov).

Respectfully,

David T. Barker, P.E.  
Senior Water Resource Control Engineer  
Surface Water Basins Branch

DTB:cc:cjm

**Mr. David Ahles  
City of Carlsbad  
NOV No. R9-2009-0092**

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**June 18, 2009**

Certification No.	04C-077
File Number	18-2004077
CIWQS Place ID	647103
Reg. Measure No.	320700
Violation No.	323809
	323810
NOV ID No.	366823

Enclosure: Notice of Violation R9-2009-0097

Cc via email: (w/encl.)

Mr. Paul Klukas  
Director of Planning  
Planning Systems  
1530 Faraday Avenue, Suite 100  
Carlsbad, CA 92008

Ms. Tamara Spear  
California Department of Fish and Game  
South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123

Ms. Kari Coler  
U.S. Army Corps of Engineers  
Regulatory Division  
South Coast Branch, San Diego Section  
6010 Hidden Valley Road, Ste. 105  
Carlsbad, CA 92011

**California Regional Water Quality Control Board  
San Diego Region**

<b>IN THE MATTER OF:</b>  <b>Carlsbad Municipal Water District City of Carlsbad 1635 Faraday Avenue Carlsbad, California 92008</b>	<b>NOTICE OF VIOLATION NO. R9-2009-0097</b>  <b>FAILURE TO COMPLY WITH CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION NO. 04C-077, FOR CALAVERA DAM REMEDIAL IMPROVEMENTS PROJECT</b>
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**YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ALLEGED VIOLATIONS:**

Failure to comply with Certification Condition C.4 and C.5 of CWA Section 401 Water Quality Certification 04C-077.

The Certification was issued by the California Regional Water Quality Control Board, San Diego Region (hereafter Regional Board) on May 15, 2006, and subsequently amended on August 11, 2006.

**BASIS FOR ALLEGED VIOLATIONS:**

**Violation of Condition C.5**

Condition C.5 requires that:

“The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2006, construction of mitigation for all impacts must be completed no later than September 2007).”

News paper reports (Union Tribune, November 24, 2007) indicate that impacts to waters of the US/State occurred sometime in September 2007, after the nesting season for birds. Consequently, and in accordance with Condition C.5 of the Certification, construction of the mitigation for the impacts to 0.40 acres of jurisdictional waters should have been completed no later than September 2008.

A February 10, 2009 letter from Paul Klukas (City of Carlsbad designated Agent) to the Army Corps of Engineers (see Attachment No. 1) indicates that the construction of the required mitigation began in February 2009. A Change of information (COI) form submitted on January 6, 2009 to the State Water Resources Control Board in

accordance with the projects coverage under the Statewide Construction Stormwater Permit (see Attachment No. 2) indicates that mitigation project completion should be done by September 1, 2009. Thus, completion of the required mitigation is anticipated to be approximately one year delayed.

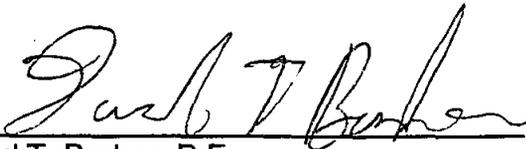
**Violation of Condition C.4**

Condition C.4 required that:

“The Carlsbad Municipal Water District shall submit a report (including topography maps and planting locations) to the SDRWQCB within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.”

In accordance with Condition C.5 of the Certification this report would have been due at the latest in December 2008. To date, the Regional has not received the required report.

The violations alleged in the enclosed Notice of Violation are serious and may result in further enforcement action against you, including the imposition of administrative civil liability of up to \$5,000 per day per violation pursuant to Water Code section 13350.



David T. Barker, P.E.  
Senior Water Resource Control Engineer

June 18, 2009



LAND USE/COASTAL PLANNING  
LANDSCAPE ARCHITECTURE • LA3900  
POLICY AND PROCESSING  
ENVIRONMENTAL MITIGATION

February 10, 2009

Ms. Kari Coler  
U.S. ARMY CORPS OF ENGINEERS  
6010 Hidden Valley Road  
Suite 106  
Carlsbad, CA 92011

RE: COMPLETION OF CONSTRUCTION ACTIVITIES  
CALAVERA DAM REMEDIAL IMPROVEMENTS  
Auth. #200400983-KJC

Dear Ms. Coler:

In my position as agent for the above-referenced project, this letter is to inform you that the construction activities related to the impacts have been completed.

We are now beginning construction of the wetland creation, restoration and enhancement mitigation. Our restoration ecologist, Greg Evans will be contacting you as implementation of this mitigation commences.

Thank you for your assistance on this flood control repair project.

Sincerely,

Paul J. Klukas  
Director of Planning

cc: David Ahles  
Greg Evans



**VI. REGULATORY STATUS**

A. Has a local agency approved a required erosion/sediment control plan?  YES  NO  
 Does the erosion/sediment control plan address construction activities such as infrastructure and structures?  YES  NO  
 Name of local agency: City of Carlsbad Phone: (760)652-2748

B. Is this project or any part thereof, subject to conditions imposed under a CWA Section 404 permit of 401 Water Quality Certification?  YES  No  
 If yes, provide details: Mitigation Work

**VII. RECEIVING WATER INFORMATION**

A. Does the storm water runoff from the construction site discharge to (Check all that apply):

- Indirectly to waters of the U.S. SAME
- Storm drain system - Enter owner's name: \_\_\_\_\_
- Directly to waters of U.S. (e.g., river, lake, creek, stream, bay, ocean, etc.)

B. Name of receiving water: (river, lake, creek, stream, bay, ocean): \_\_\_\_\_

**VIII. IMPLEMENTATION OF NPDES PERMIT REQUIREMENTS**

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)

A SWPPP has been prepared for this facility and is available for review: Date Prepared: 1.6.09 Date Amended: \_\_\_\_\_

A SWPPP will be prepared and ready for review by (enter date): \_\_\_\_\_

A tentative schedule has been included in the SWPPP for activities such as grading, street construction, home construction, etc.

B. MONITORING PROGRAM

A monitoring and maintenance schedule has been developed that includes inspection of the construction BMPs before anticipated storm events and after actual storm events and is available for review.

If checked above: A qualified person has been assigned responsibility for pre-storm and post-storm BMP inspections to identify effectiveness and necessary repairs or design changes.  YES  NO

Name: Bill Lopez Phone: 619-247-2417

C. PERMIT COMPLIANCE RESPONSIBILITY

A qualified person has been assigned responsibility to ensure full compliance with the Permit, and to implement all elements of the Storm Water Pollution Prevention Plan including:

- Preparing an annual compliance evaluation.  YES  NO  
 Name: \_\_\_\_\_ Phone: \_\_\_\_\_
- Eliminating all unauthorized discharges.  YES  NO

**IX. VICINITY MAP AND FEE (must show site location in relation to nearest named streets, intersections, etc.)**

Have you included a vicinity map with this submittal?  YES  NO SAME

Have you included payment of the annual fee with this submittal?  YES  NO

**X. CERTIFICATIONS**

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that I have read the entire General Permit, including all attachments, and agree to comply with and be bound by all of the provisions, requirements, and prohibitions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."

Printed Name: David Ahles  
 Signature: Sr Civil Engineer Date: 1/6/09  
 Title: David Ahles

600N 80  
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**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. David Ahles  
 City of Carlsbad  
 1635 Faraday Avenue  
 Carlsbad, CA 92008-7314

2. Article Number  
 (Transfer from service label)

7008 1140 0002 8455 9701

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
**X**

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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Sent To  
 Mr. David Ahles / City of Carlsbad  
 Street, Apt. No.,  
 or PO Box No. 1635 Faraday Ave  
 City, State, ZIP+4  
 Carlsbad CA 92008-7314

PS Form 3800, August 2006

See Reverse for Instructions